



February 25, 2002

Ms. Ann-Marie P. Sheely
Assistant County Attorney
Travis County
P.O. Box 1748
Austin, Texas 78767

OR2002-0868

Dear Ms. Sheely:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 158501.

The Travis County Medical Examiner's Office (the "county") received two requests for a specific autopsy report. You indicate that you are willing to release a redacted copy of the autopsy report. You seek, however, to withhold the redacted information from disclosure under sections 552.103 and 552.108 of the Government Code. We have considered your arguments and have reviewed the information at issue.

Initially, we address your arguments that autopsy reports are subject to the Act's exceptions to disclosure. Section 11 of article 49.25 of the Code of Criminal Procedure governs autopsy reports prepared by a medical examiner. Prior to 1999, section 11 read:

The medical examiner shall keep full and complete records properly indexed, giving the name if known of every person whose death is investigated, the place where the body was found, the date, the cause and manner of death, and shall issue a death certificate. The full report and detailed findings of the autopsy, if any, shall be a part of the record. Copies of all records shall promptly be delivered to the proper district, county, or criminal district attorney in any case where further investigation is advisable. *Such records shall be public records.* [Emphasis added.]

This office has always interpreted this language to mean that autopsy reports prepared by a medical examiner are expressly public. *See* Open Records Decision No. 529 (1989) (stating that autopsy reports are open in their entirety pursuant to express language of section 11 of article 49.25 of Code of Criminal Procedure). Consequently, an autopsy report could not be withheld under one of the Act's exceptions to disclosure. *See* Open Records Decision No. 525 (1989) (stating that Public Information Act's exceptions do not, as a general rule, apply to information made public by other statutes).

However, in 1999, the Seventy-sixth Legislature enacted Senate Bill 785, which among other things, amended section 11 to read as follows:

The medical examiner shall keep full and complete records properly indexed, giving the name if known of every person whose death is investigated, the place where the body was found, the date, the cause and manner of death, and shall issue a death certificate. The full report and detailed findings of the autopsy, if any, shall be a part of the record. Copies of all records shall promptly be delivered to the proper district, county, or criminal district attorney in any case where further investigation is advisable. *The records are subject to required public disclosure in accordance with Chapter 552, Government Code, except that a photograph or x-ray of a body taken during an autopsy is excepted from required public disclosure in accordance with Chapter 552, Government Code, but is subject to disclosure:*

- (1) under a subpoena or authority of other law; or
- (2) if the photograph or x-ray is of the body of a person who dies while in the custody of law enforcement. [Emphasis added.]

You specifically assert that based on a plain reading of the amended language, autopsy reports are subject to the Act's provisions. After reviewing your arguments, we agree that the change of language in the statute indicates a legislative intent to change the law. *See Buckner Glass & Mirror Inc. v. T.A. Pritchard Co.*, 697 S.W.2d 712 (Tex. App.—Corpus Christi 1985, no writ) (when Legislature amends law, it is presumed that it intends to change law). All statutes are presumed to be enacted by the legislature with full knowledge of the existing condition of the law and with reference to it, and statutes are, therefore, to be construed in connection and harmony with the existing law. *State v. Bradley*, 956 S.W.2d 725, 740 (Tex. App.—Fort Worth 1997), *rev'd on other grounds*, 990 S.W.2d 245 (Tex. 2000). In this instance, we must presume that the legislature knew that autopsy reports were expressly made public and not subject to any of the Act's exceptions when it amended the statute to say that autopsy reports are "subject to required public disclosure in accordance with Chapter 552, Government Code." We also agree that a plain reading of the phrase "subject to required public disclosure in accordance with Chapter 552, Government Code,"

means that the information must be disclosed in accordance with section 552.021, unless one of the Act's exceptions applies. *See Ex Parte Torres*, 943 S.W. 2d 469 (Tex. Crim. App. 1997) (stating that if language of statute is not ambiguous, court must give effect to plain meaning of its words unless doing so would lead to absurd results).

However, in this instance, the document at issue is a completed report.¹ Section 552.022 of the Government Code makes certain information expressly public, and, therefore, not subject to discretionary exceptions to disclosure. One such category of expressly public information under section 552.022 is "a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by [s]ection 552.108[.]" Gov't Code § 552.022(a)(1). Thus, a governmental body seeking to withhold an autopsy report, or particular information within an autopsy report, must provide this office with arguments explaining how the information is either subject to the law enforcement exception or expressly made confidential by law. You argue that the redacted material is excepted from disclosure under sections 552.103 and 552.108. Since section 552.103 is a discretionary exception and does not itself make information confidential, we will not address your arguments under that exception. *See Open Records Decision No. 551 (1990)* (statutory predecessor to section 552.103 serves only to protect a governmental body's position in litigation). We will, however, address your arguments under section 552.108.

Section 552.108 of the Government Code provides in relevant part as follows:

(a) [i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of 552.021 if: (1) release of the information would interfere with the detection, investigation or prosecution of crime[.]

Generally, a governmental body claiming an exception under section 552.108 must reasonably explain, if the information does not supply the explanation on its face, how and why the release of the requested information would interfere with law enforcement. *See Gov't Code §§ 552.108(a)(1), (b)(1), .301(b)(1); see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You explain that the autopsy records were forwarded to the Travis County District Attorney's Office and relate to their ongoing homicide investigation. You further explain that the redacted information reveals unusual and specific details about the crime scene and the victim. You state that the release of this information would threaten the integrity of the investigation and hamper efforts to apprehend the perpetrator. You state that the Travis County District Attorney's Office has redacted these portions from the autopsy records. You have also submitted a letter from the Travis County District Attorney's Office stating that the release of the redacted portions would interfere with the detection, investigation, and prosecution of crime. Thus, based on the submitted representations and

¹We note that the submitted autopsy records do not include photographs or x-rays of the individual who died.

our review of the documents, we agree that the county may withhold the redacted portions of the autopsy report from disclosure under section 552.108. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases); Open Records Decision No. 216 (1978); *see also* Open Records Decision Nos. 474 (1987), 372 (1983) (where incident involving allegedly criminal conduct is still under active investigation or prosecution, section 552.108 may be invoked by any proper custodian of information which relates to incident); Open Records Decision No. 586 (1991) (need of another governmental body to withhold requested information may provide compelling reason for nondisclosure under section 552.108).

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

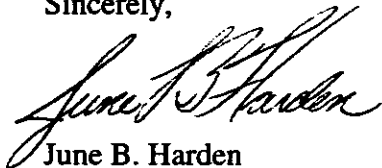
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



June B. Harden
Assistant Attorney General
Open Records Division

JBH/seg

Ref: ID# 158501

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